IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10963 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

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Appearance:

MR GIRISH Patel, Sr. Advocate with MR JITENDRA MALKAN for Petitioner No.1

MR MD PANDYA for Respondent No. 1

MR MR MENGDEY, AGP for Respondent Nos.2-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of Decision : 08/07/2002

ORAL JUDGEMENT

Rule. Mr.M.D.Pandya, learned advocate appears and waives service of rule on behalf of Respondent No.1 and Mr.Mengdey, learned A.G.P. appears and waives

service of rule on behalf of Respondent Nos.2 and 3. By consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2. The petitioner is a Limited Company who is a High Tension consumer of the Gujarat Electricity Board i.e. Respondent No.1. By way of the present petition the order dated 22nd May, 2001 passed by the Electrical Inspector, Surat under Section 26(6) of the Indian Electricity Act, 1910 is challenged on the various grounds stated in the petition as well as those which were urged during the course of hearing. Against the aforesaid order the petitioner preferred an appeal, as provided under Section 36 of the Act which came to be rejected on 6th October, 2001.

3. Mr.Girish Patel, learned senior advocate with Mr.Jitendra Malkan has challenged the order of the Electrical Inspector by contending that the order suffers from basic infirmity as being one which was passed without application of mind, was a non-speaking order, and the Electrical Inspector while exercising power under Section 26(6) of the Act was required to function as a quasi-judicial authority and the decision arrived at by him had to be one which a reasonable person would arrive at after taking into consideration the facts and evidence on record. In support of the aforesaid contention, it was pointed out on behalf of the petitioner that though the petitioner had furnished various technical details, data and made exhaustive submissions, both factual and legal, the order of the authority did not reflect as to how the said submissions were dealt with. It was further emphasised that though the petitioner had supplied figures for an entire period of 12 months which pointed out the maximum and minimum consumption of the energy, the said figures were not taken into consideration and the order dated 22nd May, 2001 was absolutely silent in regard to this. It was also urged that respondent Nos.2 and 3 though represented by the learned A.G.P. had chosen not to file any reply and hence an adverse inference should be drawn.

4. Mr.M.D.Pandya, learned advocate appearing for the respondent No.1 - Board submitted that the order passed by the Electrical Inspector was in accordance with the provision of the Act. That as provided under the Act, he was the person qualified to deal with the dispute raised and it was not possible for this Court to sit in appeal over the said decision. That the petitioner had already availed the statutory remedy of appeal and no case was

made out by the petitioner which would enable this Court to exercise extraordinary jurisdiction under Article 227 of the Constitution of India. It was also submitted on behalf of respondent No.1 that the contention regarding average consumption of units, number of days, etc. were the factors which would require consideration in a case involving power theft, while the present case only pertained to slowness of meter which recorded the consumption of energy. It was also submitted that the consumption of average units was not the sole factor but the more important factor was the maximum demand which was consumed taking into consideration that in case of a High Tension consumer the billing method was two tariff billing.

Mr.Mengdey, learned A.G.P. adopted the contentions advanced by Mr.Pandya.

5. The undisputed facts which have come on record are that until August 2000 the meter which recorded the energy consumption at the premises of the petitioner was found to be recording correct consumption. In fact it was only on 25th November, 2000 when the meter was checked that for the first time it was realized that there was a defect in the meter. The petitioner invoked the jurisdiction of Electrical Inspector by applying as provided under Section 26(6) of the Act. Accordingly respondent No.2 called upon the petitioner and respondent No.1 to make their respective submissions. After taking the same into consideration he has arrived at the conclusion that the dispute as to correctness of the meter emanated at the earliest on 27th November, 2000. That taking into consideration the fact that sub-section (6) of Section 26 of the Act provides for estimating the amount of energy supplied to the consumer during such time which may not exceed six months, the consumer i.e. the petitioner was required to be billed for the period 1st September, 2000 to 25th November, 2000. Furthermore, it has been held that as the meter system had been repaired on 9th December, 2000, the petitioner was also required to be issued a supplementary bill for the period from 25th November, 2000 to 9th December, 2000.

6. Section 26(6) of the Act as is relevant for the present purpose reads as under :

> "(6) Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an

> Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save, as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity : "

7. On plain reading of the provision it is apparent that, first requirement of the Section is that there should be a difference or dispute as to whether any meter is correct or not. In case there is such a dispute, the same has to be decided by an Electrical Inspector upon an application by either party. Admittedly in the present case the said part of the provision was invoked by the petitioner and due procedure has been followed and there is no dispute as regards the same. The next part of the provision stipulates that once the Electrical Inspector is of the opinion that the meter ceased to be correct, the Inspector shall estimate the amount of the energy supplied to the consumer and the maximum period for which such an estimate can be made has also been provided in the Section. The third limb of the provision stipulates by way of an overriding provision that in case the Electrical Inspector does not find that the meter is not correct, the register of the meter shall be conclusive proof of the energy consumed except in cases of fraud.

8. Hence in the present case once the Electrical Inspector had come to the conclusion that the meter was not showing correct reading it was incumbent upon him to make an estimate as provided in the Section. As to how and in what manner such an estimate should be made after taking into consideration which factors has not been provided by the Section and it would not be possible for this Court to rewrite the provision by stipulating such requirements, because it would differ from case to case. There is one more aspect of the matter, the Electrical Inspector is appointed by Rule 4 of the Rules which have been framed in pursuance of powers granted under Section 37 of the Act and once the qualifications have been laid down in the rule it would not be open to any one, much less this Court, to sit in judgement over a technically qualified person who is an expert in the field. No doubt it is true that an estimate has to be reasonable, based

on some material and has to have some nexus with the material on record, but at the same time one cannot loose sight of the fact that in an estimate by its very nature there must necessarily be guess work. The only rider being it should be honest and not capricious. It would not be possible for this Court to enter into realm of re-appreciation of evidence on record to substitute an estimate by another estimate once it is found that the authority in question has taken into consideration some material which was available with it to arrive at the decision.

9. Having gone through the impugned order dated 22nd May, 2001 it is not possible to accept the contentions raised on behalf of the petitioner that the order suffers from non-application of mind or is a non-speaking order taking into consideration the fact that provision of Section 26(6) of the Act only calls for an estimate to be made. This is not a case of power theft requiring elaborate discussion of various contentions raised by the petitioner.

10. In light of what is stated hereinbefore, this petition fails. Rule discharged. Interim relief granted earlier stands vacated.

Sd/-

(D.A.Mehta, J)

'Bhavesh'